

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:HCT:NEW:PostF151851-01  
PYTaylor

date: **OCT 15 2001**

to: Territory Manager - Retailers, Food, Pharmaceutical & Healthcare  
attn: Anthony Digricoli, Team Coordinator

from: Area Counsel  
(Heavy Manufacturing, Construction & Transportation:Edison)

subject: [REDACTED]  
**Taxable Years:** [REDACTED], [REDACTED], & [REDACTED]  
**U.I.L. No.** 1461.02-00; 6229.07-00

This memorandum responds to your request for advice on the issues stated below. The advice rendered in this memorandum is conditioned on the accuracy of the facts presented to us. This advice is subject to National Office review. We will contact you within two weeks of the date of this memorandum to discuss the National Office's comments, if any, about this advice. This memorandum should not be cited as precedent.

**Issues**

1. Whether the Form 872 extending the limitations period for Forms 1042 should be executed by the withholding agent for all Forms 1042-S related thereto or a separate Form 872 executed by all entities filing Forms 1042-S?
2. Whether Form 872-F is the proper form to extend the one year assessment date for tax attributable to a partnership adjustment?

**Facts**

Form 1042

This taxpayer, or one of its subsidiaries, function as a withholding agent for purposes of section 1441 for withholding on the payment of U.S. source income to foreign persons. Two methods are used by the taxpayer to fulfill the withholding obligations of section 1461. Under the first method, Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, are filed by certain [REDACTED] entities, then the [REDACTED] entity identified as the withholding agent files the Form 1042, U.S. Annual Return of Income Tax To Be Paid at Source, consolidating all Forms 1042-

S. Under the second method, certain [REDACTED] affiliates file Forms 1042-S but the Form 1042 is not filed. In these cases, the affiliates filing Forms 1042-S use the same taxpayer identification number with different entities names on the respective Forms 1042-S.

#### Partnership Adjustment

[REDACTED] is a wholly owned subsidiary of the taxpayer. [REDACTED] is an investor in the partnership, [REDACTED]. This partnership was audited for taxable years ending [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The partnership examination closed, with agreed upon adjustments. The TEFRA one year assessment date for [REDACTED] for these adjustments is [REDACTED].

The examination of the taxpayer, [REDACTED] and affiliated companies, for the taxable years ending [REDACTED], [REDACTED] and [REDACTED], was closed in [REDACTED]. This examination resulted in a partial agreement, executed in [REDACTED]. The tax attributable to the [REDACTED] partnership adjustments, along with the other adjustments, was assessed on [REDACTED], for the years [REDACTED], [REDACTED] and [REDACTED]. The examination of the taxpayer for years [REDACTED], [REDACTED] and [REDACTED] began in [REDACTED] and will not close within one year of the date the agreement was entered into for the [REDACTED] partnership adjustments to [REDACTED].

#### Law and Analysis

##### Form 1042

Section 1461 provides that every person required to deduct and withhold any tax, pursuant to I.R.C. sections 1441 through 1446, is liable for such tax and is indemnified against claims and demands of any person for the amount of any payments properly made. Section 1.1461-1(b) further provides that a withholding agent shall annually file an income tax return on Form 1042 for withholdings of tax for a nonresident alien individual or foreign partnership, trust, estate or corporation. The Form 1042 must show the aggregate amount of income paid and tax withheld required to be reported on all the Forms 1042-S for the preceding calendar year by the withholding agent.

The withholding agent shall also make an information return on Form 1042-S to report the amounts paid to a foreign payee that are subject to withholding as defined by section 1.1441-2(a). The Form 1042-S must be filed with the IRS and furnished to the recipient for whom the form was prepared. The withholding agent must retain a copy of each Form 1042-S for the statute of limitations on assessment and collection applicable to the Form

1042 to which the Form 1042-S relates.

In the case at hand, the Form 1042 was not filed under the taxpayer's second method. The Form 1042 is an income tax return, the timely filing of which, begins the limitations period under section 6501(a). *Northern Indiana Public Service Co. v. Commissioner*, 101 T.C. 294 (1993). The Form 1042-S is an information return. Filing of Form 1042-S does not satisfy a withholding agent's obligations as provided by section 1461. Thus, the Form 872 should be executed by the withholding agent under the first method used by the taxpayer. The Form 872 language should read "the amount of any Federal withholding (I.R.C. 1441-1442 & 1461) tax due on any returns". It is not necessary to solicit Form 872 under the second method because Form 1042 was not filed.

#### Partnership Adjustment

Sections 6221 through 6233 were enacted in 1982 as part of TEFRA. These sections provide for unified audit and litigation procedures for partnerships. TEFRA requires (1) that all partners must either report all partnership items consistent with the partnership return or notify the IRS of the inconsistency, (2) designation of a tax matters partner to interact with the IRS, (3) adjustments to partnership items are determined in the unified proceedings at the partnership level, and (4) the statute of limitations relating to partnership items generally is at the partnership level. In addition, section 6229(a) provides that the period for assessing tax attributable to any partnership item is three years from the due date of the return or date filed, if later. Section 6229(b) provides that the statute may be extended by agreement between the IRS and the tax matters partner with respect to all partners, or an agreement between the IRS and a partner with respect to that partner. An agreement between the IRS and a partner only extends the limitations period of assessment of TEFRA items and affected items for that partner.

Section 6231(b) provides that partnership items of a partner for a partnership taxable year shall become nonpartnership items on the date that certain specified circumstances occur, including when the IRS enters into a settlement agreement with the partner with respect to such items. Section 6229(f)(1) provides that if a partnership item becomes a nonpartnership item, the Service has one year after the date on which the item became a nonpartnership item to assess any tax. It further provides that this one year assessment period may be extended by an agreement entered into between the Service and the partner.

Section 6229(f)(2) provides a special rule for partial settlement agreements. When a partner enters into a settlement

agreement with the Service with respect to some of the partnership items for a partnership taxable year but other partnership items remain in dispute for such year, the period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into. Section 301.6229(f)-1T further explains that the period for assessing settled items will be governed by the period for assessing the remaining unsettled items. Section 6229(f)(2) does not apply in this case since there was no partial settlement in the partnership TEFRA examination.

In this case, an agreement has been entered into between the Service and the partnership, [REDACTED], for the partnership taxable years ending [REDACTED], [REDACTED], and [REDACTED]. A Form 872-F, Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership or S Corporation That Have Converted Under Section 6231(b) of the Internal Revenue Code, was executed by the taxpayer under the following caption "[REDACTED], parent of [REDACTED]", using the parent corporation's taxpayer identification number. Pursuant to the provisions of section 6229(f)(1), the agreement entered into in this case triggers the TEFRA one year assessment rule. The period for assessing the [REDACTED] partnership year adjustments should be extended through use of Form 872-F captioned as follows: [REDACTED], as agent of [REDACTED] EIN: [REDACTED]." The taxpayer identification number of the parent company should be provided in the upper right hand box of the Form 872-F.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

WILLIAM F. HALLEY  
Associate Area Counsel

By: Patricia Y. Taylor  
PATRICIA Y. TAYLOR  
Senior Attorney